IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 4249 of 1999

For Approval and Signature:

HONOURABLE MR.JUSTICE KS JHAVERI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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HARIRAM RAMDEV CHAUHAN - Petitioner(s)
Versus
STATE OF GUJARAT & 2 - Respondent(s)

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Appearance :
MR HARDIK C RAWAL for Petitioner(s) : 1,
MR KP RAVAL AGP for Respondent(s) : 1 - 3.

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CORAM : HONOURABLE MR.JUSTICE KS JHAVERI

Date : 25/06/2007

ORAL JUDGMENT

1. By way of present petition, the petitioner has prayed to quash and set aside the order at

Annexure-A dated 26.05.1999 passed by the respondent no.2 as the impugned order was passed without issuing notice to the petitioner.

2. The brief facts of the case are that, when the petitioner was working as a Police Constable, in pursuance of false and alleged incident dated 14.09.1991, chargesheet dated 01.03.1993 was issued to the petitioner. The petitioner orally objected to the proceeding with the departmental inquiry against him as the criminal case was pending against him. Inspite of that the respondents held a legal and valid departmental inquiry in which he was found not guilty to the charges levelled against him and, hence, he was exonerated by order dated 31.07.1998 and, thereafter, by order dated 14.08.1998, he was promoted to the post of Armed Head Constable, Grade – I. However, the respondent no.2 set aside the said order dated 31.07.1998 and order dated 14.08.1998. This order was passed without affording any opportunity of hearing to the petitioner and without issuing any notice to the petitioner. It is not know as to under which Section, the respondent no.2 has exercised the powers of revision. By the impugned order dated 26.05.1999, the respondent no.2 has ordered recovery from the salary of the petitioner. Hence,

the present petition.

3. It has been mainly argued by the learned counsel for the petitioner, Mr.H.C. Rawal that the impugned order dated 26.05.1999 passed by the respondent no.2 is bad, illegal and deserves to be quashed and set aside. He has also placed reliance upon the decision reported in AIR 1997(1) SC 13.

4. Learned A.G.P., Mr.Raval has contended that the order passed by the respondent No.2 is in accordance with law and, therefore, no interference is required in the matter.

5. I have heard learned counsel for the petitioner, Mr.H.C. Rawal and learned A.G.P., Mr.K.P. Raval for the respondents.

6. The respondents in their reply have admitted that the impugned order was passed without issuing notice to the petitioner and was not required to be issued.

7. In that view of the matter, only on the ground of violation of principle of nature justice, the petition deserves to be allowed and the order dated 26.05.1999 at Annexure-A is hereby quashed and set aside. Rule is made absolute to the aforesaid extent.

8. It is made it clear that this Court is not

entertained the merits of the matter. However, it will be open for the competent authority to pass appropriate order after issuing notice to the petitioner and after following procedure.

(K.S. JHAVERI, J.)

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